

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation)
Against:)**

JAMES H. LEE, M.D.)

Case No. 06-2010-209703

**Physician's and Surgeon's)
Certificate No. G-84634)**

Respondent)
_____)

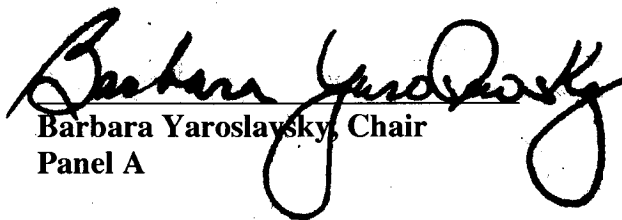
DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 8, 2014.

IT IS SO ORDERED: July 10, 2014.

MEDICAL BOARD OF CALIFORNIA


**Barbara Yaroslavy, Chair
Panel A**

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
Deputy Attorney General
4 State Bar Number 147250
300 South Spring Street, Suite 1702
5 Los Angeles, California 90013
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Attorneys for Complainant

7
8 **BEFORE THE**
MEDICAL BOARD OF CALIFORNIA
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

11 **JAMES H. LEE, M.D.**
12 **6145 N. Thesta**
Fresno, California 93710

13 **Physician's and Surgeon's Certificate**
14 **Number G 84634**

15 Respondent.

Case No. 06-2010-209703

OAH No. 2013100966

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
18 entitled proceedings that the following matters are true:

19 PARTIES

20 1. Kimberly Kirchmeyer ("Complainant") is the Interim Executive Director of the
21 Medical Board of California (Board). She brought this action solely in her official capacity and is
22 represented in this matter by Kamala D. Harris, Attorney General of the State of California, by
23 Colleen M. McGurrin, Deputy Attorney General.

24 2. JAMES H. LEE, M.D. ("Respondent") is represented in this proceeding by attorney
25 Peter R. Osinoff, Esq. of Bonne Bridges Mueller O'Keefe & Nichols, whose address is: 3699
26 Wilshire Boulevard, Tenth Floor, Los Angeles, California 90010-2719.

27 3. On or about June 19, 1998, the Board issued Physician's and Surgeon's Certificate
28 Number G 84634 to Respondent. Said Certificate was in full force and effect at all times relevant

1 to the charges brought in Accusation No. 06-2010-209703 and will expire on September 30,
2 2015, unless renewed.

3 JURISDICTION

4 4. Accusation No. 06-2010-209703 was filed before the Board, Department of
5 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
6 statutorily required documents were properly served on Respondent on September 9, 2013.
7 Respondent timely filed his Notice of Defense contesting the Accusation.

8 5. A copy of Accusation No. 06-2010-209703 is attached as exhibit A and incorporated
9 herein by reference.

10 ADVISEMENT AND WAIVERS

11 6. Respondent has carefully read, fully discussed with counsel, and understands the
12 charges and allegations in Accusation No. 06-2010-209703. Respondent has also carefully read,
13 fully discussed with counsel, and understands the effects of this Stipulated Settlement and
14 Disciplinary Order.

15 7. Respondent is fully aware of his legal rights in this matter, including the right to a
16 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at
17 his own expense; the right to confront and cross-examine the witnesses against him; the right to
18 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
19 the attendance of witnesses and the production of documents; the right to reconsideration and
20 court review of an adverse decision; and all other rights accorded by the California
21 Administrative Procedure Act and other applicable laws.

22 8. Respondent freely, voluntarily, knowingly, and intelligently waives and gives up each
23 and every right set forth above.

24 CULPABILITY

25 9. Respondent admits the truth of each and every charge and allegation in Accusation
26 No. 06-2010-209703.

27 10. Respondent agrees that his Physician's and Surgeon's Certificate is subject to
28 discipline and he agrees to be bound by the Board's probationary terms as set forth in the

1 Disciplinary Order below.

2 CONTINGENCY

3 11. This stipulation shall be subject to approval by the Board. Respondent understands
4 and agrees that counsel for Complainant and the staff of the Board may communicate directly
5 with the Board regarding this stipulation and settlement, without notice to or participation by
6 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he
7 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board
8 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,
9 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this
10 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not
11 be disqualified from further action by having considered this matter.

12 12. The parties understand and agree that Portable Document Format (PDF) and facsimile
13 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format
14 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

15 13. In consideration of the foregoing admissions and stipulations, the parties agree that
16 the Board may, without further notice or formal proceeding, issue and enter the following
17 Disciplinary Order:

18 **DISCIPLINARY ORDER**

19 IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. G 84634 issued
20 to Respondent JAMES H. LEE, M.D. is revoked. However, the revocation is stayed and
21 Respondent is placed on probation for five (5) years on the following terms and conditions.

22 1. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain
23 completely from the use of products or beverages containing alcohol.

24 If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall
25 receive a notification from the Board or its designee to immediately cease the practice of
26 medicine. The Respondent shall not resume the practice of medicine until final decision on an
27 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke
28 probation shall be filed by the Board within 15 days of the notification to cease practice. If the

1 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board
2 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent
3 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or
4 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice
5 shall not apply to the reduction of the probationary time period.

6 If the Board does not file an accusation or petition to revoke probation within 15 days of the
7 issuance of the notification to cease practice or does not provide Respondent with a hearing
8 within 30 days of a such a request, the notification of cease practice shall be dissolved.

9 2. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit
10 to biological fluid testing, at Respondent's expense, upon request of the Board or its designee.
11 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair
12 follicle testing, or similar drug screening approved by the Board or its designee. Prior to
13 practicing medicine, Respondent shall contract with a laboratory or service approved in advance
14 by the Board or its designee that will conduct random, unannounced, observed, biological fluid
15 testing. The contract shall require results of the tests to be transmitted by the laboratory or
16 service directly to the Board or its designee, and to the rehabilitation and monitoring program
17 approved by the Board, within four hours of the results becoming available. Respondent shall
18 maintain this laboratory or service contract during the period of probation.

19 A certified copy of any laboratory test result may be received in evidence in any
20 proceedings between the Board and Respondent.

21 If Respondent fails to cooperate in a random biological fluid testing program within the
22 specified time frame, Respondent shall receive a notification from the Board or its designee to
23 immediately cease the practice of medicine. The Respondent shall not resume the practice of
24 medicine until final decision on an accusation and/or a petition to revoke probation. An
25 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the
26 notification to cease practice. If the Respondent requests a hearing on the accusation and/or
27 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30
28 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be

1 received from the Administrative Law Judge or the Board within 15 days unless good cause can
2 be shown for the delay. The cessation of practice shall not apply to the reduction of the
3 probationary time period.

4 If the Board does not file an accusation or petition to revoke probation within 15 days of the
5 issuance of the notification to cease practice or does not provide Respondent with a hearing
6 within 30 days of a such a request, the notification of cease practice shall be dissolved.

7 3. PSYCHIATRIC EVALUATION. Within 30 calendar days of the effective
8 date of this Decision, and on whatever periodic basis thereafter may be required by the Board or
9 its designee, Respondent shall undergo and complete a psychiatric evaluation (and psychological
10 testing, if deemed necessary) by a Board-appointed board certified psychiatrist who specializes in
11 addiction(s), who shall consider any information provided by the Board or designee and any other
12 information the psychiatrist deems relevant, and shall furnish a written evaluation report to the
13 Board or its designee. Psychiatric evaluations conducted prior to the effective date of the
14 Decision shall not be accepted towards the fulfillment of this requirement. Respondent shall pay
15 the cost of all psychiatric evaluations and psychological testing.

16 Respondent shall comply with all restrictions or conditions recommended by the evaluating
17 psychiatrist within 15 calendar days after being notified by the Board or its designee.

18 4. PSYCHOTHERAPY. Within 60 calendar days of the effective date of this
19 Decision, Respondent shall submit to the Board or its designee for prior approval the name and
20 qualifications of a California-licensed board certified psychiatrist or a licensed psychologist who
21 has a doctoral degree in psychology and at least five years of postgraduate experience in the
22 diagnosis and treatment of emotional and mental disorders. Upon approval, Respondent shall
23 undergo and continue psychotherapy treatment, including any modifications to the frequency of
24 psychotherapy, until the Board or its designee deems that no further psychotherapy is necessary.

25 The psychotherapist shall consider any information provided by the Board or its designee
26 and any other information the psychotherapist deems relevant and shall furnish a written
27 evaluation report to the Board or its designee. Respondent shall cooperate in providing the
28 psychotherapist any information and documents that the psychotherapist may deem pertinent.

Respondent shall have the treating psychotherapist submit quarterly status reports to the Board or its designee. The Board or its designee may require Respondent to undergo psychiatric evaluations by a Board-appointed board certified psychiatrist. If, prior to the completion of probation, Respondent is found to be mentally unfit to resume the practice of medicine without restrictions, the Board shall retain continuing jurisdiction over Respondent's license and the period of probation shall be extended until the Board determines that Respondent is mentally fit to resume the practice of medicine without restrictions.

Respondent shall pay the cost of all psychotherapy and psychiatric evaluations.

5. MEDICAL EVALUATION AND TREATMENT. Within 30 calendar days of the effective date of this Decision, and on a periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo a medical evaluation by a Board-appointed physician who shall consider any information provided by the Board or designee and any other information the evaluating physician deems relevant and shall furnish a medical report to the Board or its designee. Respondent shall provide the evaluating physician any information and documentation that the evaluating physician may deem pertinent.

Following the evaluation, Respondent shall comply with all restrictions or conditions recommended by the evaluating physician within 15 calendar days after being notified by the Board or its designee. If Respondent is required by the Board or its designee to undergo medical treatment, Respondent shall within 30 calendar days of the requirement notice, submit to the Board or its designee for prior approval the name and qualifications of a California licensed treating physician of Respondent's choice. Upon approval of the treating physician, Respondent shall within 15 calendar days undertake medical treatment and shall continue such treatment until further notice from the Board or its designee.

The treating physician shall consider any information provided by the Board or its designee or any other information the treating physician may deem pertinent prior to commencement of treatment. Respondent shall have the treating physician submit quarterly reports to the Board or its designee indicating whether or not the Respondent is capable of practicing medicine safely. Respondent shall provide the Board or its designee with any and all medical records pertaining to

1 treatment, the Board or its designee deems necessary.

2 If, prior to the completion of probation, Respondent is found to be physically incapable of
3 resuming the practice of medicine without restrictions, the Board shall retain continuing
4 jurisdiction over Respondent's license and the period of probation shall be extended until the
5 Board determines that Respondent is physically capable of resuming the practice of medicine
6 without restrictions. Respondent shall pay the cost of the medical evaluation(s) and treatment.

7 6. REHABILITATION PROGRAM. Within 30 days of the effective date of
8 the Decision, Respondent shall enter a rehabilitation and monitoring program (Program) approved
9 by the Board or its designees. Respondent shall successfully complete such treatment contract as
10 may be recommended by the program and approved by the Board. Respondent shall submit
11 written verification of successful completion of such treatment in a format acceptable to the
12 Board within 30 days of completion.

13 Components of the treatment contract shall be relevant to the violation and to Respondent's
14 current status in recovery or rehabilitation. The components may include, but not limited to:
15 restrictions on practice and work setting, random bodily fluid testing, abstention from drug and
16 alcohol or other identified types of addictive behavior, use of work site monitors, participation in
17 evaluations, and other appropriate rehabilitation or monitoring programs.

18 Failure to participate in and successfully comply with all of the terms and conditions of the
19 treatment contract shall constitute a violation of probation.

20 Respondent shall further cooperate in providing the program with any and all information
21 and documents the program administrator and/or group facilitator may deem pertinent.

22 Respondent shall have the program administrator and/or group facilitator submit quarterly
23 status reports to the Board or its designee. Respondent further authorizes the release of any and all
24 information, records and/or documents from the program, including drug and alcohol testing and
25 results, to the Board or its designee without notice to or participation by Respondent or his
26 counsel.

27 Respondent shall pay all costs associated with the program.

28 ///

1 7. ADDICTIVE BEHAVIOR SUPPORT GROUP. Within five days of the
2 effective date of the Decision, Respondent shall begin attendance at an addictive behavior support
3 group (e.g., Alcoholics Anonymous, Narcotics Anonymous, Al-Anon, or other similar group) at
4 least three times per week. Verified documentation of attendance shall be submitted by
5 Respondent with each written report as required by the Board. Respondent shall continue
6 attendance in such a group for the duration of probation.

7 Failure to participate in and attend the addictive behavior support group shall constitute a
8 violation of probation.

9 Respondent shall pay all costs associated with the Addictive Behavior Support Group.

10 8. NOTIFICATION. Within seven (7) days of the effective date of this
11 Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief
12 of Staff or the Chief Executive Officer at every hospital where privileges or membership are
13 extended to Respondent, at any other facility where Respondent engages in the practice of
14 medicine, including all physician and locum tenens registries or other similar agencies, and to the
15 Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage
16 to Respondent. Respondent shall submit proof of compliance to the Board or its designee within
17 15 calendar days.

18 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

19 9. SUPERVISION OF PHYSICIAN ASSISTANTS. During probation,
20 Respondent is prohibited from supervising physician assistants.

21 10. OBEY ALL LAWS. Respondent shall obey all federal, state and local
22 laws, all rules governing the practice of medicine in California and remain in full compliance
23 with any court ordered criminal probation, payments, and other orders.

24 11. QUARTERLY DECLARATIONS. Respondent shall submit quarterly
25 declarations under penalty of perjury on forms provided by the Board, stating whether there has
26 been compliance with all the conditions of probation.

27 Respondent shall submit quarterly declarations not later than 10 calendar days after the end
28 of the preceding quarter.

12. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit and all terms and conditions of this Decision.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

13. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent

shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

///

1 14. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the
2 Board or its designee in writing within 15 calendar days of any periods of non-practice lasting
3 more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-
4 practice is defined as any period of time Respondent is not practicing medicine in California as
5 defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a
6 calendar month in direct patient care, clinical activity or teaching, or other activity as approved by
7 the Board. All time spent in an intensive training program which has been approved by the Board
8 or its designee shall not be considered non-practice. Practicing medicine in another state of the
9 United States or Federal jurisdiction while on probation with the medical licensing authority of
10 that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of
11 practice shall not be considered as a period of non-practice.

12 In the event Respondent's period of non-practice while on probation exceeds 18 calendar
13 months, Respondent shall successfully complete a clinical training program that meets the criteria
14 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and
15 Disciplinary Guidelines" prior to resuming the practice of medicine.

16 Respondent's period of non-practice while on probation shall not exceed two (2) years.

17 Periods of non-practice will not apply to the reduction of the probationary term.

18 Periods of non-practice will relieve Respondent of the responsibility to comply with the
19 probationary terms and conditions with the exception of this condition and the following terms
20 and conditions of probation: Obey All Laws; and General Probation Requirements.

21 15. COMPLETION OF PROBATION. Respondent shall comply with all
22 financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to
23 the completion of probation. Upon successful completion of probation, Respondent's certificate
24 shall be fully restored.

25 16. VIOLATION OF PROBATION. Failure to fully comply with any term or
26 condition of probation is a violation of probation. If Respondent violates probation in any
27 respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke
28 probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to

1 Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation,
2 the Board shall have continuing jurisdiction until the matter is final, and the period of probation
3 shall be extended until the matter is final.


4 17. LICENSE SURRENDER. Following the effective date of this Decision, if
5 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy
6 the terms and conditions of probation, Respondent may request to surrender his or her license.
7 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in
8 determining whether or not to grant the request, or to take any other action deemed appropriate
9 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent
10 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its
11 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject
12 to the terms and conditions of probation. If Respondent re-applies for a medical license, the
13 application shall be treated as a petition for reinstatement of a revoked certificate.

14 18. PROBATION MONITORING COSTS. Respondent shall pay the costs
15 associated with probation monitoring each and every year of probation, as designated by the
16 Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical
17 Board of California and delivered to the Board or its designee no later than January 31 of each
18 calendar year.

19
20 ACCEPTANCE

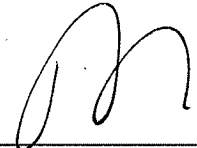
21 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully
22 discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and the effect it
23 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and
24 Disciplinary Order freely, voluntarily, knowingly, and intelligently, and agree to be bound by the
25 Decision and Order of the Medical Board of California.

26
27 DATED: June 03 - 2014


JAMES H. LEE, M.D.
Respondent

1 I have read and fully discussed with Respondent JAMES H. LEE, M.D. the terms and
2 conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order.
3 I approve its form and content.

4
5 DATED: 6/4/14


Peter R. Osinoff, Esq.
Attorney for Respondent


6
7
8
9 ENDORSEMENT

10 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
11 submitted for consideration by the Medical Board of California.

12 Dated: 6/20/2014

Respectfully submitted,

14 KAMALA D. HARRIS
Attorney General of California
15 ROBERT MCKIM BELL
Supervising Deputy Attorney General

16 
17 COLLEEN M. MCGURRIN
18 Deputy Attorney General
Attorneys for Complainant

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20 61288012.docx

Exhibit A

Accusation No. 06-2010-209703

1 KAMALA D. HARRIS
Attorney General of California
2 ROBERT MCKIM BELL
Supervising Deputy Attorney General
3 COLLEEN M. MCGURRIN
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4 State Bar Number 147250
California Department of Justice
5 300 South Spring Street, Suite 1702
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6 Telephone: (213) 620-2511
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7

8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **MEDICAL BOARD OF CALIFORNIA**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 JAMES H. LEE, M.D.
14 1409 Via Margarita
Palos Verdes Estates, California 90505

15 Physician's and Surgeon's Certificate Number
16 G 84634

17 Respondent.

Case No. 06-2010-209703

ACCUSATION

18 Complainant alleges:

19 **PARTIES**

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
21 capacity as the Interim Executive Director of the Medical Board of California, Department of
22 Consumer Affairs.

23 2. On or about June 19, 1998, the Medical Board of California issued Physician's and
24 Surgeon's Certificate number G 84634 to James H. Lee, M.D. (Respondent). Said Certificate was
25 in full force and effect at all times relevant to the charges brought herein and will expire on
26 September 30, 2013, unless renewed.

27 **JURISDICTION**

28 3. This Accusation is brought before the Medical Board of California (Board),

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 9, 2013
BY: *[Signature]* ANALYST

1 Department of Consumer Affairs, under the authority of the following laws. All section
2 references are to the Business and Professions Code unless otherwise indicated.

3 4. Section 2004 of the Code states, in pertinent part:

4 "The board shall have the responsibility for the following:

5 "(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice
6 Act.

7 "(b) The administration and hearing of disciplinary actions.

8 "(c) Carrying out disciplinary actions appropriate to findings made by a panel or an
9 administrative law judge.

10 "(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of
11 disciplinary actions.

12 "(e) . . . (i)."

13 5. Section 2220 of the Code states, in pertinent part, that the Division of Medical
14 Quality¹ may take action against all persons guilty of violating this chapter [Chapter 5, the
15 Medical Practice Act]. The division shall enforce and administer this article as to physician and
16 surgeon certificate holders, and the division shall have all the powers granted in this chapter for
17 these purposes.

18 6. Section 2230.5 of the Code states, in pertinent part, that any accusation filed against a
19 licensee pursuant to Section 11503 of the Government Code shall be filed within three years after
20 the board, or a division thereof, discovers the act or omission alleged as the ground for
21 disciplinary action, or within seven years after the act or omission alleged as the ground for
22 disciplinary action occurs, whichever occurs first.

23 7. Section 2227 of the Code provides that a licensee who is found guilty under the
24 Medical Practice Act may have his or her license revoked, suspended for a period not to exceed
25

26 ¹ California Business and Professions Code section 2002, as amended and effective January 1, 2008,
27 provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practices Act (Bus.
28 & Prof. Code § 2000, et seq.) means the "Medical Board of California," and references to the "Division of Medical
Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

1 one year, placed on probation and required to pay the costs of probation monitoring, or such other
2 action taken in relation to discipline as the Division deems proper.

3 8. Section 2239 of the Code states, in pertinent part:

4 “(a) The use . . . of alcoholic beverages, to the extent, or in such a manner as to be
5 dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that
6 such use impairs the ability of the licensee to practice medicine safely or more than one
7 misdemeanor . . . involving the use, consumption . . . of any of the substances referred to in this
8 section, or any combination thereof, constitutes unprofessional conduct. The record of the
9 conviction is conclusive evidence of such unprofessional conduct.

10 “(b) A . . . plea of nolo contendere is deemed to be a conviction within the meaning of this
11 section. The Division of Medical Quality may order discipline of the licensee in accordance with
12 Section 2227 . . . when the time for appeal has elapsed or the judgment of conviction has been
13 affirmed on appeal or when an order granting probation is made suspending imposition of
14 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal
15 Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty,
16 or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or
17 indictment.”

18 9. Section 2236 of the Code states, in pertinent part:

19 “(a) The conviction of any offense substantially related to the qualifications, functions, or
20 duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this
21 chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive
22 evidence only of the fact that the conviction occurred.

23 “(b)”

24 “(c) The clerk of the court in which a licensee is convicted of a crime shall, within 48 hours
25 after the conviction, transmit a certified copy of the record of conviction to the board. The
26 division may inquire into the circumstances surrounding the commission of a crime in order to fix
27 the degree of discipline or to determine if the conviction is of an offense substantially related to
28 the qualifications, functions, or duties of a physician and surgeon.

1 “(d) A plea . . . of nolo contendere is deemed to be a conviction within the meaning of this
2 section The record of conviction shall be conclusive evidence of the fact that the conviction
3 occurred.”

4 10. Business and Professions Code section 4060 provides, in pertinent part: “No
5 person shall possess any controlled substance, except that furnished to a person upon the
6 prescription of a physician”

7 11. Vehicle Code Section 23152, subdivisions (a) and (b), provide, in pertinent part:

8 “(a) It is unlawful for any person who is under the influence of any alcoholic beverage or
9 drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.”

10 “(b) It is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in
11 his . . . blood to drive a vehicle.”

12 12. Vehicle Code Section 23103, subdivision (a), provides: “A person who drives a
13 vehicle upon a highway in willful or wanton disregard for the safety of persons or property is
14 guilty of reckless driving.”

15 13. Vehicle Code Section 23103.5 provides, in pertinent part:

16 “(a) If the prosecution agrees to a plea of . . . nolo contendere to a charge of a violation of
17 Section 23103 . . . as a substitute for, an original charge of a violation of Section 23152, the
18 prosecution shall state for the record a factual basis for the . . . substitution, including whether or
19 not there had been consumption of an alcoholic beverage . . . by the defendant in connection with
20 the offense. The statement shall set forth the facts that show whether or not there was a
21 consumption of an alcoholic beverage . . . by the defendant in connection with the offense.”

22 “(b)”

23 “(c) If the court accepts the defendant’s plea of . . . nolo contendere to a charge of a
24 violation of 23103 and the prosecutor’s statement under subdivision (a) states that there was
25 consumption of an alcoholic beverage . . . by the defendant in connection with the offense, the
26 resulting conviction shall be a prior offense”

27 “(d)”

28 “(e) Except as provided . . . , if the court places the defendant on probation for a

1 conviction of Section 21303 that is required under this section to be a prior offense . . . the court
2 shall order the defendant to enroll in an alcohol and drug education program . . . and complete, at
3 a minimum, the educational component of that program, as a condition of probation.”

4 FIRST CAUSE FOR DISCIPLINE

5 (Conviction of Two Misdemeanor Crimes Involving Alcohol)

6 14. Respondent is subject to disciplinary action under Business and Professions Code
7 section 2239 in that he was convicted of driving a motor vehicle under the influence of alcohol, in
8 violation of Vehicle Code section 23152, subdivision (a), and reckless driving with alcohol
9 involved, in violation of Vehicle code section 23103. The circumstances are as follows:

10 **September 2, 2010 Arrest:**

11 15. On or about September 21, 2010, a Misdemeanor Complaint entitled *The People of*
12 *the State of California v. James H. Lee* was filed in the Los Angeles Superior Court bearing case
13 number OSY07632 charging Respondent with one count of driving under the influence of
14 alcohol, in violation of Vehicle code section 23152, subdivision (a), and one count of possession
15 of a controlled substance, to wit, Lorazepam, in violation of Business and Professions Code
16 section 4060. The circumstances were as follows:

17 A. On or about September 2, 2010, at approximately 11:55 a.m., Respondent was driving
18 his vehicle at an excessive speed when he lost control and struck the center median. When the
19 police arrived, Respondent stated he was driving to the hospital to perform surgery and was a
20 little anxious about running late. Respondent admitted that he had been going a little too fast and
21 lost control of his car. The officer could smell the odor of an alcoholic beverage emitting from
22 Respondent's breath as he spoke, and noticed that his eyes were bloodshot, watery and glassy.
23 The officer also noticed that Respondent swayed despite standing on a level concrete surface, and
24 adjusted his feet several times. Respondent refused to perform any of the field sobriety tests
25 which involved movement, stating he had a medical condition. Respondent submitted to a field
26 Preliminary Alcohol-Screening (PAS) test which showed that he had a blood-alcohol level of
27 .104 and .106 at the time of the accident, in excess of the legal limit. Thereafter, Respondent was
28 arrested.

1 B. After Respondent was arrested and during a search of his vehicle, the officer found
2 two prescription bottles marked with the names of two other individuals. Both bottles were for
3 Lorazepam.² One of the bottles was empty, and the other contained only 26 pills out of the
4 original 40 dispensed. When questioned by the officer, Respondent denied taking any of the pills,
5 and stated that one bottle was for his wife and the other was for a family friend. When
6 Respondent arrived at the police station, the officer requested that he submit to both a blood and a
7 urine test. Respondent refused both tests.

8 16. On or about February 16, 2011, Respondent's case was called for a Pretrial
9 Conference. His attorney appeared on his behalf and the conference was continued to March 10,
10 2011.

11 17. On or about March 10, 2011, Respondent entered a plea of nolo contendere to Count
12 1, driving under the influence of alcohol in violation of Vehicle Code section 23152, subdivision
13 (a). The court dismissed Count 2, suspended the imposition of sentence, and ordered Respondent
14 to: be placed on 3 years' summary probation; enroll and participate in and successfully complete
15 a 3-month first offender alcohol program; enroll, within 21-days, in an AB-541 program and
16 show proof of enrollment; pay a fine; and obey all laws, among other things.

17 **February 16, 2011 Arrest:**

18 18. On or about February 25, 2011, a Misdemeanor Compliant entitled *The People of the*
19 *State of California v. James H. Lee*, was filed in the Los Angeles Superior Court bearing case
20 number 1SY01536 charging Respondent with one count of driving under the influence of alcohol,
21 in violation of Vehicle code section 23152, subdivision (a), and one count of driving under the
22 influence of alcohol with a 0.08% blood-alcohol level or more, in violation of Vehicle Code
23 section 23152, subdivision (b). The circumstances were as follows:

24 A. On or about February 16, 2011, at approximately 7:01 p.m., Respondent was driving
25 his vehicle when he crashed into a parked car on the side of the roadway. When talking to the
26 police, Respondent stated he had worked all day and was fatigued. Respondent denied

27 ² Lorazepam, a Schedule IV controlled substance, is in a group of drugs called benzodiazepines. It affects
28 chemicals in the brain that may become unbalanced and cause anxiety.

1 consuming any alcohol. However, the officer could smell the odor of an alcoholic beverage
2 emitting from Respondent, and noticed that his eyes lacked smooth pursuit and showed signs of
3 horizontal nystagmus.³ The officer also noticed that Respondent swayed and staggered during
4 their encounter. Respondent submitted to a field Preliminary Alcohol-Screening (PAS) test
5 which showed that he had a blood-alcohol level of 0.11 at the time of the accident. Thereafter,
6 Respondent was arrested for driving under the influence of alcohol.

7 19. On or about September 8, 2011, the court amended criminal complaint number
8 1SY01536, by interlineation, and added a third Count for reckless driving, in violation of Vehicle
9 Code section 21303. Pursuant to Vehicle Code section 23103.5, subdivision (a), the court
10 accepted the prosecutor's statement that alcohol or drugs were involved in the incident as to
11 Count 3. Thereafter, Respondent entered a plea of nolo contendere to Count 3, reckless driving
12 with alcohol involved, a violation of Vehicle Code section 23103. The court dismissed the other
13 two counts, and suspended the imposition of sentence. The court ordered Respondent to: be
14 placed on 24 months summary probation; enroll and participate in and successfully complete an
15 alcohol and drug education program pursuant to Vehicle Code section 21303.5(e); pay a fine; and
16 obey all laws, among other things.

17 SECOND CAUSE FOR DISCIPLINE

18 (Conviction of Crimes Substantially Related)

19 20. Respondent is subject to disciplinary action under Business and Professions Code
20 section 2236 in that he was convicted of two misdemeanor crimes substantially related to the
21 qualifications, functions and duties of his profession as a physician and surgeon. The
22 circumstances are as follows:

23 21. Paragraphs 15 through 19, inclusive, above are incorporated herein by reference as if
24 fully set forth.

25 ///

26 ///

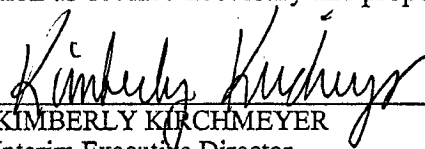
27 _____
28 ³ Nystagmus is a rapid, involuntary, oscillatory motion of the eyeball.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number G 84634; issued to James H. Lee, M.D.
2. Revoking, suspending or denying approval of his authority to supervise physician's assistants, pursuant to section 3527 of the Code;
3. If placed on probation, ordering him to pay the costs of probation monitoring to the Medical Board of California; and
4. Taking such other and further action as deemed necessary and proper.

DATED: September 9, 2013


KIMBERLY KIRCHMEYER
Interim Executive Director
Medical Board of California
Department of Consumer Affairs, State of California
Complainant

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